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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,468	10/11/2000	Nathan A. Torgerson	11738.00001	3373
7590	03/02/2004		EXAMINER	
Scott A Burow Banner & Witcoff Ltd 10 S Wacker Drive Chicago, IL 60606			MENDEZ, MANUEL A	
		ART UNIT	PAPER NUMBER	
		3763	4	
DATE MAILED: 03/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/686,468	TORGERSON ET AL.
Examiner	Art Unit	
Manuel Mendez	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 06/12/2002.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-60 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-60 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haller, et al., in view of Cannon.

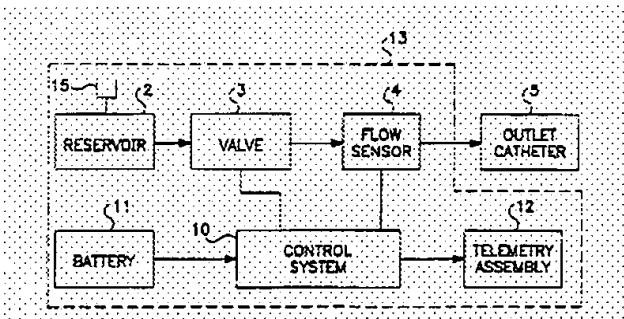


FIG. 1

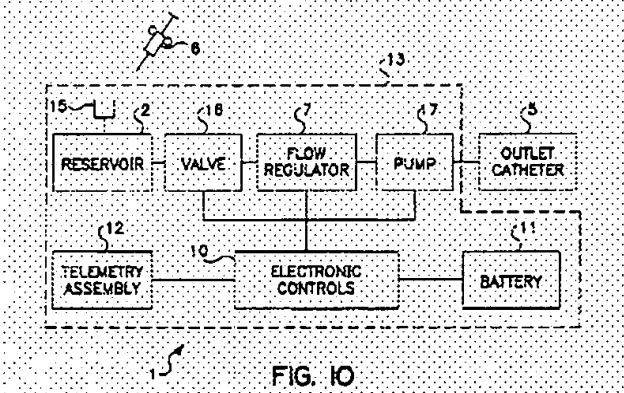


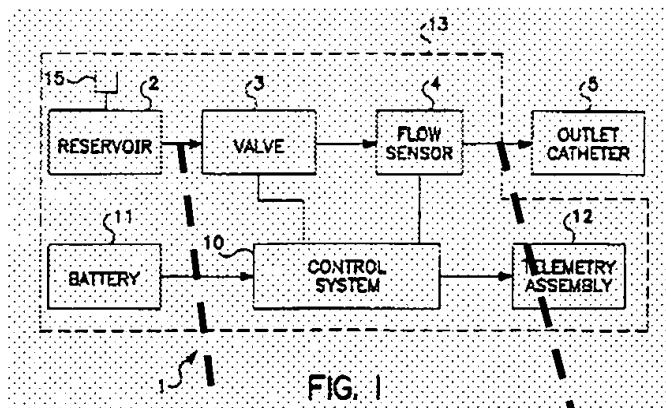
FIG. 10

In figures 1 and 10, Haller, et al., shows an implantable apparatus having a fluid reservoir, a regulator assembly adjustable to a plurality of flow rate settings for

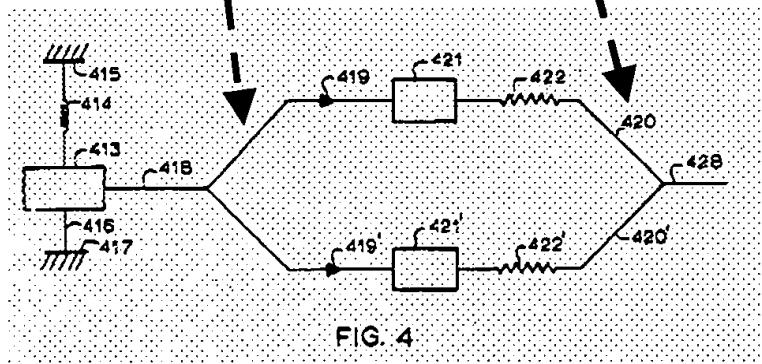
regulating flow, electromechanical control means for changing flow rates and means for receiving signals. The cited patent does not disclose the use of a radio frequency signals. However, such use is conventional as evidenced by the teachings of Cannon.

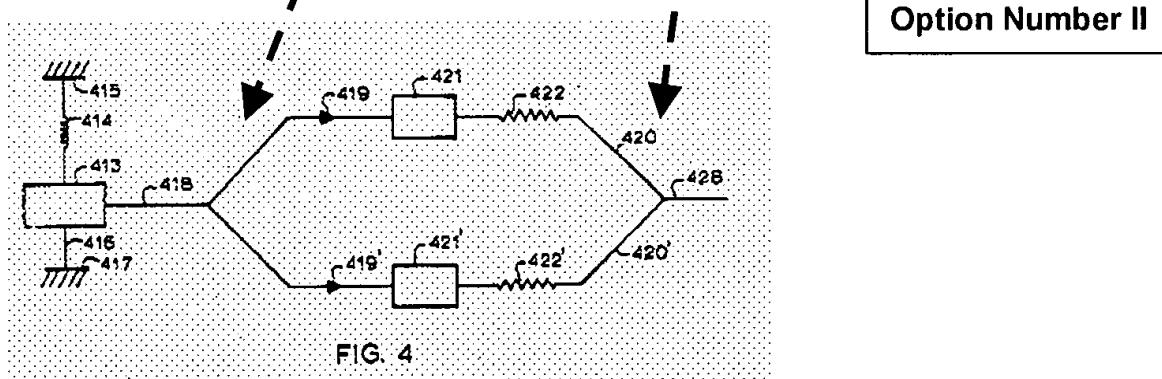
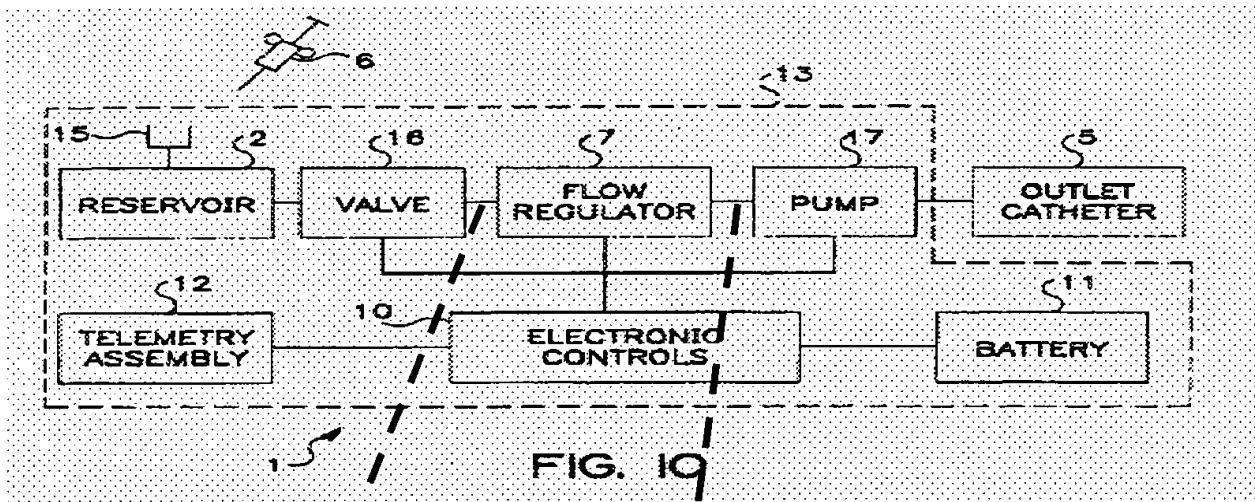
**In column 1, lines 22-24,** Cannon specifically asserts that the use of radio frequency signals in combination with implantable pumps is well known in the art. Accordingly, for a person of ordinary skill in the art, the use of the radio frequency spectrum in the design of the telemetry devices in implantable pumps would have been considered an obvious design choice.

**Claims 9, 15, 21, and 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Haller, et al., in view of Cannon.



Option Number I





Haller, et al., does not disclose a plurality of flow restrictors operatively coupled to the valve for providing a plurality of flow rates. However, in figure 4, Cannon shows an embodiment using multiple flow restrictors to modify flow rate. Furthermore, in column 5, lines 47-56, Cannon discloses that flow varies according to the resistance (flow restrictor) selected for the system resulting in multiple flow rates.

Accordingly, it would have been obvious for a person of ordinary skill in the art to modify Haller, et al., by modifying figures 1 or 10 above with multiple fluid paths having

different flow rates as taught by Cannon since the enhancement would have expanded the infusion capabilities of the implantable pump. Conclusively, such modification or enhancement would have been considered an obvious design choice.

**Claims 2-8, 10-14, 16-20, 22-26, and 28-60** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Haller, et al., in view of Cannon, and in further view of Shulman, Tucker, et al., DiDomenico, and Ellinwood, Jr.**

The above-cited claims disclose enhancements to Option Number I and Option Number II that are conventional in the art of implantable pumps. This conclusion is based on the teachings of Shulman, Tucker, et al., DiDomenico, and Ellinwood, Jr. Accordingly, for a person of ordinary skill in the art, the enhancements disclosed in the above-cited claims would have been considered obvious design choices.

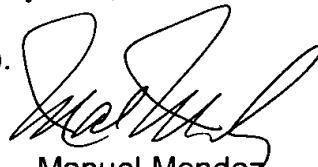
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose telephone number is 703-308-2221. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Manuel Mendez  
Primary Examiner  
Art Unit 3763

MM